IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 6958 of 2001 (S/S)
(Old No. 13454 of 1998)

Man Singh and others …… Petitioners

Versus

State of Uttar Pradesh and others ……. Respondents

Date of decision: 7th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the Judgment? (Yes)

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Man Singh & others. …….. Petitioners.

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Sh. P.C. Jhingan, Advocate for the petitioners,
Sh. Rakesh Thapaliyal, Advocate for Respondents.

Hon'ble P.C. Pant – J.

This writ petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to regularize the service of the petitioners as class IV employees with respondent Jal Sansthan and also for payment of arrears of salary from the date of their appointments.

Brief facts of the case are that petitioners are working as part time Fitters under Assistant Engineer, Garhwal Jal Sansthan, Chinyali Saur, district Uttarkashi and were engaged between 1984 to 1994. The nature of duties of the petitioners is not less than that of the regular and permanent employees of the jal sansthan but by being kept on daily wages they are being deprived of salary payable to the regular employees. The petitioners are working uninterruptedly since they were engaged but still after more than 10 years they are being paid wages in the name of years they are being paid wages in the name of honorarium at the rate of Rs. 400.00 per month. It is

alleged in the writ petition that the principle of equal pay for equal work enshrined in Article 39(d) of the Constitution of India is being violated as the petitioners are not being given even the minimum wages prescribed by the State Government for other departments. Demands were raised by the petitioners through a charter before Executive Engineer, Garhwal Jal Sansthan, Uttarkashi in the year 1997 in which the demand No. 7 was relating to the minimum wages. The negotiations were held with the Executive Engineer and the demands were sent to the head office of Garhwal Jal Sansthan at Dehradun. Quoting the various judgments of the Supermen Court including that of Surendra Singh Vs Engineer in Chief (1986) S.C.C. (L & S) page 189, Nehru Yuvak Kendra Vs State (1986) S.S.C. (I & S) page 1987, R.D. Gupta Vs Union of India- 1987 (3) S.C.C. page 526, E.P. Royappa Vs State of Tamil Nadu- 1974 (Supreme Court) 555, it is stated of in the writ petition that the petitioners are being exploited by making payment of Rs. 4000.00 per month. As such, the petitioners have demanded the pay scale of Rs 750 – 940 and sought mandamus against the respondents by filing this writ petition.

Respondent No. 2, 3 & 4 have filed Joint counter affidavit wherein stand taken by the petitioners is denied. It is stated that the job of petitioners is very causal in nature as part time fitters are engaged for one scheme and chosen form the village where the scheme runs. They are at liberty to carry out their other job simultaneously. The main duty with part time

fitter to report to department if dislocation of any pipe line is seen by him. Their claim to be at par with regular employees can not be accepted nor they are being exploited.

I heard learned counsel for the parties and perused all the Annexure filed with the writ petition & counter affidavit.

The short question before this court is whether the petitioners are wrongly denied the regularization to the post of Class IV employees.

Learned counsel for the petitioners argued that under Article 39(d) of the Constitution of India the principle of equal pay for equal work is enshrined and in the preamble of the Constitution world "socialist" has been added for giving justice to the poor and deprived people. In support of the submission Mr. P.C. Jhingan, leaned counsel for the petitioners referred the principle of law laid down in E.P. Royappa vs State of Tamil Nadu- A.I.R. 1974 (Supreme Court) 555, Randhir Singh Vs Union of India-1982(1) Supreme Court cases page 618, Secretary Finance Vs West Bengal Registration Services Association – A.E.R. 1992 (Supreme Court) 1203, State of West Bengal Vs Pantha Chaterjee-2003 A.I.R. S.C.W 3316.

Before applying the principle of equal pay for equal work it is pertinent to mention that the petitioners are admittedly part time Chaukidars/ Fitters but they are claiming salary of the whole time regular class IV employees. Sri Rakesh Thapaliyal, learned counsel for the respondent argued that under a scheme

drawn under U.P. Water & Sewage Supply Act, 1975 the water pipe line laid in villages is to be maintained by the villages themselves and the petitioners are the part time Chaukidars of that category to whom neither any qualification nor any age limit is required. On behalf of respondents my attention was drawn to the judgment dated April 10,1995 delivered by Hon'ble Mr. Justice Alok Chaktrabarti of Allahabad High Court in Writ Petition No. 26910 of 1992 in which the same question was raised and the Writ Petition was dismissed. Perusal of said judgment shows that the said Writ Petition was filed by U.P. Jal Nigam, Jal Sansthan Mazdoor Union of Tehri Garhwal and Sansthan and in said cases also part time employees had raised the same issue before the Allahabad High Court and that High Court holding that water supplying scheme was a matter of policy found that no legal right accrued to the part time employees and dismissed the writ petition.

Undoubtedly for regularization of services one needs sanctioned posts of class IV employees against which one can be regularized. The charter of demands and the minutes of the talks held by the petitioners with Executive Engineer of Garhwal Jal Sansthan, Uttarkashi which are Annexure to the writ petition show that there is no item either in the demand or in the minutes relating to regularization of petitioners. Rather, it only relates to the points of timely payment of wages to the part time Chaukidars and demand No. 7 relates to the minimum wages Rs

1550.00 per month instead of Rs. 400.00 per month for which the matter was referred by the Executive Engineer to the headquarter of the Garhwal Jal Sansthan, Dehradun.

In the above facts and circumstances of the case, since there is no legal right which accrued to the petitioners and this court can not direct to regularization of the services of the petitioners as class IV employees. However, petitioners demand for raising minimum wages of Rs. 400.00 per month to Rs. 1550.00 per month deserves sympathetic consideration on the part of the respondents. The writ petition is accordingly dismissed with said observation. No order as to costs.

Dated: August 7, 2004 (P.C. Pant-J)

S.S. Negi.